

RESTRICTED

HEADQUARTERS EIGHTH ARMY
United States Army
Office of the Staff Judge Advocate

Yokohama, Japan
17 November 1947

UNITED STATES OF AMERICA VS MUTSUO OKUBO

Review of the Staff Judge Advocate

1. The attached record of trial of Mutsuo Okubo at Yokohama, Japan on 9 September by a Military Commission appointed by paragraph 26, Special Orders No. 207, Headquarters Eighth Army, United States Army, dated 4 September 1947, having been referred to the Staff Judge Advocate, this review thereof is submitted to the Commanding General.

Personal Data Concerning Accused

NAME: Mutsuo Okubo	DATE OF CONFINEMENT: 23 November 1945
AGE: 35	DATE OF ARRAIGNMENT: 9 September 1947
RESIDENCE: Aza Myoga, Setoza-cho, Toyota-gun, Hiroshima	PLACE OF TRIAL: Yokohama, Japan
MARITAL STATUS: Married	PERIOD OF TRIAL: 9 September 1947
RELATIVES: Wife and two sons	DATE OF SENTENCE: 9 September 1947
EDUCATION: Graduated middle school	SENTENCE: CHL for two (2) years
VOCATION: Factory employee	
MILITARY CAREER: Inducted in 1933 and returned after one year's service. Called to colors in 1942 and attained rank of sergeant major.	
CLEMENCY RECOMMENDED BY COMMISSION: No	

2. Synopsis of Charges, Pleas, Findings, Legal Sufficiency and Sentence.

<u>Charges and Specifications:</u>	<u>Pleas</u>	<u>Findings</u>	<u>Legally Sustained</u>
Charge: Accused, at the times and places set forth in the specifications hereto attached, did violate the Laws and Customs of War.	NG	G	Yes
Sp 1: On or about 23 October 1942, accused did willfully and unlawfully mistreat and abuse Lt. Col. William Robinson, an American PW, by beating him.	NG	G	Yes
Sp 2: On or about 10 November 1942, accused did willfully and unlawfully mistreat and abuse one Sgt. Schrock, an American PW, by beating him.	NG	NG	
Sp 3: In or about February 1944, accused did willfully and unlawfully mistreat and abuse Lt. Col. George Orr, an American PW, by beating him.	NG	G	Yes
Sp 4: Between about 23 October 1942 and about 6 June 1944, accused did willfully mistreat numerous American PW's by beating and otherwise abusing them.	NG	G	Yes

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3. Summary of Evidence:

a. For the Prosecution:

As to Specification 1: A group of prisoners was being transferred from Mindanao to the Davao Penal Colony in the Philippine Islands. When they were yet aboard ship in the bay near Davao, accused boarded the ship and beat Lt. Col. William Robinson, who was Acting Executive Officer for the prisoners. He first struck him with his open hand and fist (R. 5). He suddenly took out his pistol and struck him across the side of the head with it (R. 9, Ex. 1). He then took out a pack of cigarettes, put one cigarette in his own mouth and shoved one into Col. Robinson's mouth. After a period of about one minute had elapsed, he slapped him for no apparent reason, knocking him against the rail of the ship. At Davao Penal Colony Colonel Robinson's eyesight became so bad that he could distinguish only light from dark and night from day (R. 5). He was nearly blind (Ex. 1). He had to resign as Executive Officer because his sight had deteriorated to such an extent that he could not keep up with his duties (R. 9). When they put him on work details he would trip over limbs and fall into ditches (R. 10). Col. Doctors, Medical Officer, believed the blow delivered by accused caused the deterioration of Col. Robinson's eyesight (R. 10).

As to Specification 2: (Not Guilty)

As to Specification 3: While on a work detail at Davao Camp, a guard told Major Orr to get into a truck and wait. Subsequently accused came to the truck and asked him who had told him he could ride in the truck. Major Orr explained why he was there. Accused ordered him out of the truck and struck him about fifteen times in the face with his fist (R. 11, 12, 13, Ex. 3). This beating closed his eye, caused his nose to bleed, gave his lips a mashed appearance and partially tore one of his ears (R. 11).

As to Specification 4: The evidence under this specification shows that during an inspection Major Jones was severely slapped and punched by accused. After the inspection was over, Capt. Cairns was beaten by accused in the same manner (R. 11, 12, Ex. 4).

b. For the Defense:

Toshio Tsubota, initial witness for the defense, testified that he served at Davao Penal Colony as an administrative officer. He knew accused during that time. There was a noncommissioned officer at the camp by the name of Don whose height, weight and over-all physical condition were practically the same as accused's. When he was out of doors he always wore dark glasses (R. 14).

Accused took the stand and testified that in September, 1942 he arrived at the Davao Camp. There was a corporal there at that time by the name of Don. Accused was then a corporal (R. 16). Accused's and Don's duties were under the Administrative Branch. Among Don's duties was that of sometimes boarding the ships. Accused's duties did not ever cause him to board a ship. He was not on the bridge of the ship that brought the prisoners to Davao in October, 1942 or 1943. He knew Col. Robinson. He did not come in "contact" with him when he arrived by ship. He denied ever hitting him with fists, open hand, revolver butt or revolver barrel and did not give him a cigarette and knock it out of his face (R. 17). He denied that the testimony of S/Sgt. Grill (as set forth in R. 4-8) was true. As to the first two specifications, Cpl. Don could have been the perpetrator because of his similarity of build and features to those of accused. Lt. Walker told accused at the motor pool that he and accused looked very much alike. Major Orr refused to alight from a truck when he ordered him to do so (R. 18). Major Orr "lifted his shoulders high in a scornful manner". Since he showed such scorn before the rest of the prisoners, accused became angered and slapped him. At that time he did not know he was Major Orr. He learned this later when a report was made after he returned to camp. The statement in Major Sly's affidavit (Ex. 1) that he hit Major Orr ten

to fifteen times in the face with his fist is a lie. His statement that Major Orr's ear was torn is not correct. Regarding Specification 4, he was not in charge of an inspection of prisoners on or about 9 October 1942. Medical Officer Yoshimura was in charge and Don was present. He did not slap or punish Major Jones or Capt. Cairns at any time. Major Orr's lip was slightly cut and it bled a little as a result of the slapping. His nose was not bleeding (R. 19). Accused's job was camp secretary and duty at the motor pool. Sgt. Don's job was approximately the same (R. 20).

4. Opinion:

The record is legally sufficient to support the findings of the Commission, except as to a portion of Specification 4, which will be considered hereafter. Otherwise, each allegation of the charge and specification of which accused was found guilty was substantiated by ample and competent evidence. The Commission was constituted by proper authority and had jurisdiction of accused and of the offenses alleged.

The prosecution introduced evidence by means of former prisoners who took the stand and testified, and by affidavits of other prisoners, all of whom had been on the prisoner ship or were interned at the camp and were in a position to know the facts of the matters in issue. From such, the guilt of accused was firmly established.

Under Specification 4, it is alleged that accused "at divers times" beat and otherwise abused "numerous" prisoners. The entire evidence under this specification shows that on one occasion he beat Major Jones and Capt. Cairns. By no stretch of imagination can this be considered "divers" times, nor can the two victims be considered to constitute "numerous" prisoners.

The complete record shows that accused had a fair trial and was ably represented by competent counsel. He took the stand and testified in his own behalf. A careful scrutiny of the entire record fails to reveal any error which injuriously affected the substantial rights of accused or any failure to accord him a fair trial in every respect. The evidence supports the findings, except as hereinabove noted. There is no evidence that accused was not sane at the time the alleged acts were committed and at the time of trial.

5. Recommendations:

There are no letters of clemency from any member of the Commission or from others.

The Commission sentenced accused to confinement at hard labor for two (2) years. The sentence is legal.

For the reasons set forth in the above opinion relative to Specification 4, it is recommended that accused be found not guilty of the words "at divers times" and the word "numerous" in said specification and that the findings of the Commission as to the remaining words of this specification and the findings relative to the other specifications and the charge be approved.

From the record it would appear that this is the type of war criminal - the inhuman, brutal type - for whom war crimes commissions were especially created to try and to punish with just severity. When one considers that accused was found guilty of beating Lt. Col. Robinson so severely that his subsequent loss of eyesight was believed by Medical Colonel Deeters to have been caused by this beating, that he sadistically beat Lt. Col. (then Major) Orr to such an extent that his eye was closed, his nose was bleeding, his lips were mashed against his face and one of his ears was partially torn, and that he viciously beat Major Jones and Capt. Cairns, to say that the present sentence to two years confinement at hard labor is an adequate sentence would be a gross misstatement of what constitutes justice. It is not hard to imagine what sentence in a court-martial proceeding would be meted out to one in our army who would so mistreat one of his own rank. To compare such with the present sentence makes

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it appear extremely ridiculous. Accused was a noncommissioned officer and his victims were officers - of an enemy army, true - nevertheless, officers for whom the Conventions provide that respect shall be given. This cowardly accused knew that they were helpless and dared not defend themselves and took advantage of the situation. Major Sly states that it would have been suicide to have defended one's self (Ex. 3). However, it is beyond the power of the reviewing authority to increase the punishment. In order that accused may not escape some punishment for his crimes, it is recommended that the sentence be approved.

Accused was held by our forces from 10 September 1945 until 23 November 1945, as were others who had surrendered. From 23 November 1945 until 30 June 1947 he was imprisoned in the Lupal Suspect Camp. On 30 June 1947 he was transferred to Sugamo Prison, arriving there 3 July 1947. Under established policy a convicted accused is given credit for the time of his incarceration, less three months, against his sentence. It is recommended that such time be computed from 23 November 1945 when he was held as a war crime suspect. Accused was sentenced 9 September 1945. Under the above computation it is recommended that eighteen and one-half (18½) months of the sentence imposed be remitted. Sugamo Prison, Tokyo, Honshu, Japan is the appropriate place of confinement.

6. Action:

A form of action designed to carry this recommendation into effect is attached hereto.

PAUL E. SPURLOCK
Reviewer
Judge Advocate Section

I concur. Compelling proof of allegations in three specifications charging responsibility for war crimes such as those established in this case demands a sentence greatly in excess of two years. Nevertheless, pre-trial confinement is in no way to be considered as confinement served in expiation for offenses of which an accused is later convicted. Therefore a reviewing authority should consider such restraint entirely separately from that adjudged by a commission. The blackest rogue is entitled to an early trial under the enlightened rules of civilized nations. When trials are postponed, as this one was, because of the great number of those awaiting justice, fair allowances should be made for undue pre-trial confinement regardless of the inadequacy of a sentence. This is all the more true since commissions are instructed that pre-trial confinement is not to be considered in adjudging sentences.

ALLAN R. PROWSE
Lt Colonel JAGC
Army Judge Advocate